

# **EXHIBIT B**

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
EASTERN DIVISION  
CIVIL ACTION NO. 4:09-CV-3-BR

BENJAMIN G. HINES, JR., ) VIDEOTAPED  
)  
PLAINTIFF, ) D-E-P-O-S-I-T-I-O-N  
)  
VS. ) OF  
)  
TRIAD MARINE CENTER, INC., ET ) BENJAMIN G. HINES, JR.  
AL, )  
DEFENDANTS. )

\* \* \* \* \*  
SEPTEMBER 29, 2009, AT THE LAW OFFICES OF WHEATLY, WHEATLY,  
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1 MARINA AND STUFF, IT'S NOT MUCH DIFFERENT THAN HERE. THERE'S  
2 A LITTLE LESS TO DO THAN THERE IS HERE, BUT IT'S JUST A  
3 CHANGE OF SCENERY.

4 Q. HOW FAR CAN YOU RIDE YOUR BIKE?

5 A. PROBABLY - I HAVEN'T RIDDEN IT, MORE THAN BEING  
6 AROUND THE DOCK AND AROUND THE MARINA, MORE THAN A MILE.

7 Q. WHY DO YOU NEED A GIRL'S BIKE?

8 A. IT'S HARD TO GET ON AND OFF OF THE BIKE.

9 Q. WHY IS THAT?

10 A. THAT HORIZONTAL BAR, IT'S DIFFICULT TO PRESS  
11 DOWN ON THE ANKLE TO GET UP IF YOU USE YOUR LEFT ANKLE, AND  
12 IF YOU DON'T AND YOU'RE GETTING OFF THE BIKE, IT'S UNSTABLE  
13 TO RELY ON ONE ANKLE ALL OF A SUDDEN. IT'S JUST EASIER  
14 WITHOUT THAT BAR IN THE WAY. YOU HAVE LESS OF A SPACE FOR  
15 YOUR ANKLE TO HAVE TO HIT BEFORE BOTH FEET ARE ON THE GROUND,  
16 DOES THAT MAKE SENSE?

17 Q. UH-HUH.

18 A. OKAY.

19 Q. WHEN DID YOU START LEARNING ABOUT BOATS, WHAT  
20 AGE WERE YOU?

21 A. A KID.

22 Q. DID YOUR FATHER BOAT AS WELL?

23 A. HE DIDN'T, BUT MY UNCLE DID.

24 Q. YOU WERE HOW OLD, ABOUT?

25 A. TEN.

1 Q. WHEN DID YOU FIRST OWN YOUR OWN BOAT?  
2 A. AS SOON AS I GOT OUT OF SCHOOL, RESIDENCY, SO  
3 SINCE '88.  
4 Q. HOW MANY BOATS HAVE YOU OWNED?  
5 A. AT LEAST HALF A DOZEN TO TEN.  
6 Q. BEFORE THESE LAST FOUR THAT WE DISCUSSED?  
7 A. PROBABLY FOUR MORE.  
8 Q. WHAT KIND OF BOATS?  
9 A. PROBABLY THE LARGEST WAS ABOUT A 38, 40 FOOT  
10 BOAT.  
11 Q. ALL MOTORIZED?  
12 A. YES, ALL MOTOR BOATS. I KNOW NOTHING ABOUT  
13 SAILING, DIDN'T GROW UP WITH SAILBOATS.  
14 Q. DID YOU EVER TAKE ANY KIND OF COURSES, OR  
15 INSTRUCTION . . .  
16 A. YES, SIR.  
17 Q. WHAT DID YOU TAKE?  
18 A. POWER SQUADRON COURSES.  
19 Q. SAY IT AGAIN?  
20 A. POWER SQUADRON COURSES.  
21 Q. WHAT IS THAT?  
22 A. IT'S AN ASSOCIATION, VOLUNTEERS, SORT OF LIKE A  
23 PSEUDO AUXILIARY COAST GUARD, FOR TEACHING.  
24 Q. FOR TEACHING?  
25 A. TEACHING, AND RECREATION, SOCIALIZATION, AND YOU

1 TAKE COURSES, AND YOU TAKE COURSES FOR NAVIGATION, AND  
2 MECHANICS, AND I'VE TAKEN ALL OF THOSE, SEAMANSHIP.

3 Q. HAVE YOU TAUGHT?

4 A. NO, I HAVE NOT TAUGHT.

5 Q. DO YOU HAVE ANY SORT OF CERTIFICATE OF ANY KIND?

6 A. YES, UH-HUH.

7 Q. WHAT DO YOU HAVE?

8 A. DON'T KNOW THE NAMES ANYMORE, BUT SEAMANSHIP,  
9 AND PROBABLY NAVIGATION, AND ADVANCED NAVIGATION, AND  
10 MECHANICS, AND I'M NOT SURE WHAT ELSE, BUT THERE'S QUITE A  
11 FEW OF THEM.

12 Q. WHO GRANTS THOSE TO YOU, WHAT ORGANIZATION?

13 A. THE COURSE INSTRUCTOR THAT IS TEACHING UNDER THE  
14 AUSPICES OF THE POWER SQUADRON.

15 Q. THIS POWER SQUADRON IS A . . .

16 A. THAT WAS A GREENVILLE BASED POWER SQUADRON, MOST  
17 COUNTIES, I THINK, HAVE THEM.

18 Q. SO IT'S AN ASSOCIATION OF VOLUNTEERS THAT KIND  
19 OF PROMOTE SAFETY AND INSTRUCTION, AND IF SOMEBODY WERE JUST  
20 BUYING A BOAT FOR THE FIRST TIME, MIGHT THEY GO TO SOMEBODY  
21 LIKE YOU AND SAY, TEACH ME HOW TO DO BOATING, I MEAN, I DON'T  
22 KNOW HOW THAT APPLIES?

23 A. THEY WOULD PROBABLY, RATHER THAN GO TO ME, SEEK  
24 OUT THE POWER SQUADRON, OR I WOULD ADVISE THEM TO DO THAT,  
25 IT'S MORE REGIMENTED IN TEACHING.

1 Q. DID YOU HAVE A CERTAIN NUMBER OF HOURS THAT YOU  
2 HAD TO LOG IN ORDER TO GET THESE CERTIFICATIONS FOR  
3 SEAMANSHIP, NAVIGATION, ET CETERA?

4 A. THEY'RE TOTALLY CLASSROOM WORK.

5 Q. IS THERE A CERTAIN NUMBER OF HOURS?

6 A. I WOULD GATHER THAT EACH COURSE WAS PROBABLY  
7 TEN, TWELVE HOURS OF CLASSROOM WORK, BUT I - IT'S BEEN A LONG  
8 TIME, I TOOK NUMEROUS COURSES YEARS AGO.

9 Q. COULD YOU ESTIMATE HOW MANY HOURS OF COURSE WORK  
10 YOU HAD?

11 A. 100 HOURS, 60 TO 100 HOURS OVER THE YEARS.

12 Q. WOULD YOU CONSIDER YOURSELF AN EXPERT IN  
13 OPERATING POWER BOATS?

14 A. I DON'T THINK I'M AN EXPERT. I'M A LEARNED  
15 POWER BOATER, BUT I DON'T REALLY THINK I'M AN EXPERT.

16 Q. WHAT WOULD YOU HAVE TO DO TO BECOME AN EXPERT,  
17 BY YOUR DEFINITION?

18 A. I'M NOT SURE. I DON'T KNOW WHAT I WOULD DO TO  
19 MAKE ME FEEL MORE LEARNED, I REALLY DON'T.

20 Q. SO YOU'VE BEEN OPERATING POWERBOATS SINCE 1988?

21 A. YES, SIR.

22 Q. YOU'VE OWNED POWERBOATS, BUT EVEN BEFORE THAT AS  
23 A KID, YOU OPERATED POWERBOATS?

24 A. YES, UNDER SUPERVISION.

25 Q. HAVE YOU EVER BEEN IN A POSITION IN OPERATING A

1 IF THEY TRULY CLOSED AT 6:00, I MUST HAVE STAYED AFTER HOURS,  
2 BUT, WHAT WAS THE QUESTION, I'M SORRY?

3 Q. HOW LONG YOU WERE THERE, HOW LONG YOU SPENT THE  
4 FIRST DAY . . .

5 A. I THINK I WAS THERE FOR AT LEAST AN HOUR, AT  
6 LEAST AN HOUR.

7 Q. HOW MANY BOATS DID YOU LOOK AT?

8 A. I DID A CURSORY EXAMINATION OF ONE, AND I DID A  
9 MUCH MORE THOROUGH EXAMINATION OF THIS BOAT. THIS BOAT BEING  
10 THE BOAT THAT I WAS INJURED ON.

11 Q. SO I TAKE IT YOU - I MEAN, WE DID TALK A LITTLE  
12 BIT ABOUT THE TWO BOATS, AND THE HIGH QUALITY  
13 WAS - APPARENTLY THE TRITON WAS HIGHER QUALITY, AT LEAST  
14 THAT'S WHAT YOU THOUGHT AT THAT TIME, CORRECT?

15 A. YES, SIR.

16 Q. SO THAT'S THE ONE THAT YOU WANTED TO SEA TRIAL?

17 A. YES, SIR.

18 Q. WHAT DID YOU TELL JOHN HYDE ABOUT TESTING OUT  
19 THE BOAT?

20 A. THAT MONDAY NIGHT?

21 Q. YES?

22 A. I TOLD HIM MY PURPOSE WAS I NEEDED A BOAT THAT  
23 WOULDN'T BEAT MY WIFE UP AS THE SKIFF DID, THAT I NEEDED A  
24 BOAT THAT WAS DRY IN RIDE, AND THAT BASICALLY WAS THE  
25 PURPOSE, AND SINCE HE SAID THE TRITON WAS THE HEAVIER BOAT,

1 IT WOULD BE DRIER, AND WOULDN'T POUND LIKE THE SKIFF WOULD  
2 POUND, THAT SHE WOULD FIND IT A MORE COMFORTABLE RIDING BOAT.

3 Q. SO YOU WANTED TO TEST IT OUT, YOU WANTED TO SEA  
4 TRIAL IT, THE TRITON?

5 A. YES, SIR.

6 Q. YOU WANTED TO TAKE IT OUT AND TEST IT?

7 A. YES, SIR, ABSOLUTELY.

8 Q. THAT WAS YOUR IDEA, RIGHT?

9 A. YES, I WOULDN'T BUY A BOAT WITHOUT SEA TRIALING  
10 IT, YES.

11 Q. RIGHT, I UNDERSTAND. SO YOU TOLD HIM, LET'S  
12 TAKE IT OUT, AND HOW DID THE DISCUSSION GO ABOUT WHEN YOU  
13 WOULD TAKE IT OUT?

14 A. I DROVE FROM WORK AND TOLD HIM I WAS HEADED TO  
15 THE BEACH, AND I DON'T REMEMBER. I WOULD HAVE SIMPLY SAID, I  
16 NEEDED IT, IF I'M GOING TO DRIVE THE BOAT, IT NEEDS TO BE  
17 TOMORROW.

18 Q. WASN'T IT THE FACT THAT YOU SAID YOU WANTED TO  
19 OPERATE IT IN HEAVY CONDITIONS?

20 A. NO, MY DAYS OFF IS TUESDAY, WE DON'T HAVE A  
21 CHOICE. IF WE'RE GOING TO TEST DRIVE THE BOAT, IT'S ON  
22 TUESDAY, PERIOD.

23 Q. SO YOU DIDN'T SAY I WANT TO TEST IT IN HEAVY  
24 CONDITIONS TO SEE IF IT STAYS DRY, YOU DIDN'T SAY THAT?

25 A. NO, NO.



1 Q. YOU DON'T RECALL THAT?  
2 A. NO.  
3 Q. SO JUST TUESDAY IS YOUR DAY OFF, SO THAT'S THE  
4 DAY YOU HAD TO GO, IS THAT WHAT YOU'RE SAYING?  
5 A. CORRECT.  
6 Q. WAS THAT YOUR DECISION, YOUR CHOICE TO GO ON A  
7 TUESDAY?  
8 A. NO, I JUST SAID, IF YOU CAN DO IT TOMORROW, I'LL  
9 DO IT TOMORROW, THAT'S THE DAY I HAVE OFF, I'LL BE AT THE  
10 BEACH TOMORROW.  
11 Q. WERE YOU AT THE CONDO?  
12 A. YES, SIR, THAT'S WHERE I WAS HEADING.  
13 Q. DID YOU STAY THERE CERTAIN DAYS OF THE WEEK WHEN  
14 YOU WERE WORKING?  
15 A. NO, I ONLY WENT DOWN IF I COULD ON MONDAY NIGHT,  
16 AND SPENT TUESDAY, THEN CAME BACK TUESDAY NIGHT, BECAUSE I  
17 HAD TO WORK AGAIN WEDNESDAY.  
18 Q. HOW FAR AWAY ARE THE TWO RESIDENCES?  
19 A. ABOUT EIGHTY MILES.  
20 Q. SO YOU SET IT UP FOR A MEETING ON TUESDAY, TO  
21 TAKE THE BOAT OUT?  
22 A. YES, SIR.  
23 Q. THEN TELL ME WHAT HAPPENED, YOU MET JOHN HYDE AT  
24 THE DOCK?  
25 A. YES, SIR.

1 Q. AT YOUR DOCK AT OLDE TOWNE?  
2 A. YES, SIR.  
3 Q. HE DOCKED IT SOMEWHERE ELSE AND OPERATED THE  
4 BOAT AROUND TO WHERE YOU WERE LOCATED, RIGHT?  
5 A. RIGHT, HE BROUGHT IT TO OLDE TOWNE.  
6 Q. WHAT WERE THE WEATHER CONDITIONS?  
7 A. IT WAS RAINING, AND IT WAS PROBABLY  
8 BLOWING - THERE WAS A LITTLE SMALL CRAFT ADVISORY, AND  
9 PROBABLY BLOWING 20, CONDITIONS WERE NICE AND A LITTLE SNOTTY  
10 IN THE SOUND, PROBABLY WAVES 3 TO 4.  
11 Q. 3 TO 4 FEET?  
12 A. YES.  
13 Q. YOU KNEW THAT BEFORE YOU WENT OUT?  
14 A. YES, SIR.  
15 Q. YOU DIDN'T THINK THAT WAS A PROBLEM IN ANY WAY,  
16 DID YOU?  
17 A. NO, SIR.  
18 Q. CONDITIONS DIDN'T CHANGE FROM THE TIME YOU LEFT  
19 UNTIL THE ACCIDENT, THEY WERE STILL 3 TO 4 FEET?  
20 A. YES, SIR.  
21 Q. DID THAT BOAT HAVE A G.P.S.?  
22 A. I WOULD ALMOST THINK I LOOKED AT A SPEEDOMETER,  
23 BUT NOT A G.P.S.  
24 Q. DID YOU MAKE ANY NOTES AT ALL AS TO WHAT  
25 HAPPENED THAT DAY, ANYTHING IN WRITING AT ANYTIME AFTER THE

1 ACCIDENT?

2 A. NO, SIR.

3 Q. WHETHER IT WAS MONTHS LATER, OR DAYS LATER?

4 A. NO, SIR.

5 Q. ARE YOU SURE IT HAD A SPEEDOMETER, OR DO YOU

6 JUST THINK IT DID?

7 A. NO, IF THERE'S SOME OTHER DEVICE THAT GIVES YOU

8 SPEED - THERE WAS A DEVICE, IN MY MIND.

9 Q. SO THERE WERE JUST THE THREE OF YOU ON THE BOAT,

10 JOHN HYDE, NEIL WAGONER, AND YOU, CORRECT?

11 A. YES, SIR.

12 Q. JOHN HYDE PICKED UP BOTH YOU AND NEIL AT YOUR

13 DOCK, CORRECT?

14 A. YES.

15 Q. HOW DID YOU GET DOWN TO THE DOCK FROM YOUR

16 APARTMENT, JUST WALK?

17 A. YES, SIR.

18 Q. YOU DIDN'T RIDE YOUR BIKE OR ANYTHING?

19 A. NO, I DIDN'T RIDE A BIKE AROUND THE DOCK THEN.

20 Q. DO YOU, AT THIS TIME, EVER WALK FROM YOUR

21 APARTMENT OR YOUR CONDO, TO THE DOCK?

22 A. THAT'S ALL I DID.

23 Q. WALK?

24 A. YES, SIR.

25 Q. NOT RIDE A BIKE?

1 A. CORRECT.

2 Q. WHEN DO YOU DECIDE WHEN YOU'RE GOING TO RIDE  
3 YOUR BIKE OUTSIDE?

4 A. NOW?

5 Q. YES, I'M TALKING ABOUT AFTER THE ACCIDENT, DID  
6 YOU WALK FROM YOUR CONDO . . .

7 A. I ALMOST ALWAYS RIDE THE BIKE, EVERYWHERE I GO  
8 AROUND THE CONDO, EVEN IF IT'S JUST DOWNSTAIRS TO SOCIALIZE.

9 Q. DO YOU KNOW WHAT THE TEMPERATURE WAS THAT DAY AS  
10 YOU WERE GOING OFF?

11 A. I DON'T REMEMBER, I WOULDN'T GATHER AN ATTEMPT.

12 Q. AS I UNDERSTAND WHAT HAPPENED, YOU TELL ME IF  
13 I'M WRONG, YOU WERE GOING TO TEST DRIVE THE BOAT YOURSELF FOR  
14 A WHILE, THEN YOU WERE GOING TO TURN IT OVER TO JOHN HYDE AND  
15 HAVE HIM GO INTO THE INLET, AND SEE IF THE BOAT WOULD OPERATE  
16 AND STAY DRY IN THOSE CONDITIONS IN THE INLET THAT DAY?

17 MR. HARDEE: OBJECTION. YOU MAY ANSWER, BEN.

18 Q. IS THAT CORRECT?

19 A. NO, SIR.

20 Q. THAT'S NOT CORRECT?

21 A. NO.

22 Q. TELL ME WHAT HAPPENED THEN, WHAT THE PLAN WAS?

23 A. I DROVE THE BOAT, AND WHEN I DIDN'T LIKE THE  
24 HANDLING OF THE BOAT, ASKED JOHN, AS I HAS ASKED OTHER PEOPLE  
25 TO DRIVE THE BOAT AND INSTRUCT ME, ASKED HIM TO SHOW ME COULD

1 HE HANDLE THE BOAT BETTER, BUT THERE WAS NO MENTION OF THE  
2 INLET, THERE WAS NO MENTION OF ROUGH WATER AT ALL.

3 Q. WELL, WASN'T PART OF YOUR PURPOSE TO SEE IF THAT  
4 BOAT WOULD REMAIN DRY IN HEAVY CONDITIONS, I MEAN, YOU TOLD  
5 HIM THE DAY BEFORE YOU WANTED A DRY BOAT, AND ONE THAT'S NOT  
6 THAT ROUGH?

7 A. RIGHT, BUT HEAVY CONDITIONS IS NOT WHAT I WOULD  
8 PUT MY WIFE IN AT ALL. I MEAN, HEAVY CONDITIONS, WE'RE  
9 ALREADY IN IT, IT'S 3 TO 4 FEET. IF THAT'S ALL WE'RE GOING  
10 TO DO - IF I TAKE MY WIFE OUT MORE THAN 3 TO 4, SHE'S MAD AS  
11 HELL THAT I'M IN 3 OR 4, THAT'S SPRAYING HER ENOUGH, SO WHAT  
12 I CHOSE THAT DAY WOULD BE ALL THAT WE'D EVER BE IN. THERE'S  
13 NO REASON TO GO OUT TO THE INLET, I MEAN, I WOULDN'T WANT THE  
14 BOAT FOR ANYTHING LIKE THAT.

15 Q. SO YOU DIDN'T TELL HIM TO GO OUT IN THE INLET  
16 THEN?

17 A. NO, SIR. NO, I JUST WANTED TO SEE IF HE COULD  
18 DRIVE THE BOAT AND SHOW ME HOW TO KEEP THE BOAT FROM  
19 PORPOISING.

20 Q. WHY DID HE GO OUT IN THE INLET THEN?

21 A. YOU'D HAVE TO ASK HIM, I HAVE NO IDEA.

22 Q. YOU HEARD HIS TESTIMONY YESTERDAY, DIDN'T YOU?

23 A. I HEARD IT, BUT I DON'T REMEMBER WHAT HE SAID.  
24 IF HE SAID I SAID IT, HE'S WRONG.

25 Q. CAN YOU THINK OF ANY REASON THAT HE WOULD GO OUT

1 INTO THE INLET AFTER YOU HAD DRIVEN IT FOR A HALF HOUR?

2 A. I WOULDN'T KNOW WHY HE DID WHAT HE DID, I REALLY

3 WOULDN'T.

4 Q. DOES IT MAKE ANY SENSE?

5 A. THE WHOLE THING DID NOT MAKE SENSE.

6 Q. I MEAN, YOU KNOW HE'S A COAST GUARD CAPTAIN,

7 RIGHT?

8 A. IT STILL WOULDN'T MAKE SENSE. WHAT HAPPENED DID

9 NOT MAKE SENSE.

10 Q. YOU UNDERSTAND THAT HE HAS . . .

11 A. IT WOULDN'T MATTER WHAT HE HAD.

12 Q. DO YOU UNDERSTAND THAT HE HAS THAT LICENSE?

13 A. I HEARD THAT HE HAD YESTERDAY, FOR THE FIRST

14 TIME.

15 Q. WHEN YOU MET WITH HIM AND YOU TALKED TO HIM, DID

16 HE SEEM LIKE HE WAS VERY CAPABLE?

17 A. I DIDN'T KNOW HE HAD A LICENSE AT THAT TIME, AND

18 KNEW NOTHING ABOUT IT.

19 Q. DID YOU TELL JOHN HYDE, DON'T GO IN THE INLET?

20 A. NO, I DIDN'T SAY, DON'T GO IN THE INLET.

21 Q. SO YOU THOUGHT THAT WAS OKAY?

22 A. I WAS NOT AWARE HE WAS GOING IN THE INLET.

23 Q. YOU KEPT A PROPER LOOKOUT, DIDN'T YOU?

24 A. NO, I WASN'T WATCHING WHERE HE WAS DRIVING.

25 Q. YOU WERE STANDING TO HIS LEFT, YOU WERE FACING

1 FORWARD AS HE WAS OPERATING, ISN'T THAT RIGHT?

2 A. FACING OBLIQUELY. I'M LOOKING AT HIM AND HOW  
3 HE'S DRIVING THE BOAT. I AM TECHNICALLY FACING FORWARD, BUT  
4 I REALLY AM NOT LOOKING WHERE HE'S GOING, THAT'S TRUE.

5 Q. SO YOU DIDN'T EVEN KNOW WHERE HE WAS GOING, YOU  
6 WERE NOT LOOKING?

7 A. AS I SAID, I'M WATCHING HOW HE'S HANDLING THE  
8 BOAT, BECAUSE I'M TRYING TO SEE WHAT HE DOES DIFFERENTLY.

9 Q. WELL, WHAT WAS HE DOING?

10 A. DRIVING THE BOAT.

11 Q. I KNOW, BUT HOW WAS HE DOING IT, WHAT WAS HE  
12 DOING WITH HIS HANDS?

13 A. I'M NOT SURE WHAT YOU'RE ASKING?

14 Q. YOU SAID THAT YOU'RE LOOKING AT HIM, WATCHING  
15 HIM, HOW HE HANDLED THE BOAT, HOW DID HE HANDLE IT?

16 A. I WAS WATCHING HIM WITH HIS HAND ON THE WHEEL  
17 AND A HAND ON THE HELM. I MEAN, HAND ON THE HELM AND HAND ON  
18 THE THROTTLE.

19 Q. WAS HE DOING ANYTHING, WAS HE MOVING HIS HANDS?

20 A. OH, YES, HE WAS MOVING BOTH.

21 Q. WAS IT SOMETHING DIFFERENT THAN WHAT YOU WERE  
22 DOING, WEREN'T YOU OPERATING IT THE SAME WAY HE DID, WITH  
23 YOUR HAND ON THE THROTTLE . . .

24 A. YOUR HANDS ARE ALWAYS IN THE SAME PLACE. I  
25 WANTED TO SEE IF HE COULD MANAGE THE BOAT DIFFERENTLY.

1 Q. SO YOU AGREE THAT YOU'RE HEADING OUT TO THESE  
2 WAVES THAT ARE 3 TO 4 FEET HIGH, CORRECT, WHEN HE'S OPERATING  
3 THE BOAT, ISN'T THAT RIGHT?

4 A. YES.

5 Q. AND YOU DIDN'T HAVE ANY OBJECTION TO THAT?

6 A. NO.

7 Q. OVER THE COURSE OF YOUR CAREER AND YOUR TEACHING  
8 AND SO FORTH, I MEAN, YOU'VE BEEN IN THE SAME CONDITIONS  
9 PROBABLY THOUSANDS OF TIMES, ISN'T THAT CORRECT?

10 A. YES, I DIDN'T MIND BEING OUT IN 3 TO 4 FOOT  
11 CHOP.

12 Q. SO THAT WAS A COMMON THING FOR YOU TO  
13 PARTICIPATE IN, SO TO SPEAK, OR TO BE IN THE PRESENCE OF  
14 WAVES OF THAT SIZE?

15 A. YES, SIR.

16 Q. YOU DIDN'T HAVE ANY OBJECTION TO HIS GOING OUT  
17 THERE?

18 MR. WEEKS: WHEN YOU'RE TALKING ABOUT OUT THERE,  
19 WHAT ARE YOU REFERRING TO?

20 Q. I'LL WITHDRAW THE QUESTION. YOU DIDN'T HAVE ANY  
21 PROBLEM WITH THE DIRECTION IN WHICH HE WAS OPERATING THE  
22 BOAT?

23 MR. WEEKS: AT WHAT POINT IN TIME?

24 Q. AFTER IT WAS TURNED OVER TO JOHN HYDE?

25 A. I'M NOT SURE I AM UNDERSTANDING THE SPECIFICS OF



1 WHAT YOU'RE ASKING ME.

2 Q. YOU'VE ALREADY AGREED THAT YOU DIDN'T TELL HIM,  
3 DON'T GO OUT IN THE INLET?

4 A. THAT'S CORRECT.

5 Q. SO YOU DIDN'T HAVE A PROBLEM WITH THE FACT THAT  
6 HE WAS GOING OUT IN THE INLET?

7 A. I DIDN'T KNOW HE WAS GOING OUT IN THE INLET,  
8 THAT'S CORRECT.

9 Q. WHEN DID YOU FIND OUT THAT HE WAS GOING IN THE  
10 INLET?

11 A. I DIDN'T REALIZE UNTIL HE TURNED AT A CERTAIN  
12 POINT IN FRONT OF FORT MACON WHERE WE WERE, BECAUSE I WASN'T  
13 WATCHING WHERE WE WERE.

14 Q. SO WHEN YOU SAW HIM TURNING LEFT TO GO OUT TO  
15 THE INLET, YOU KNEW HE WAS GOING OUT TO THE INLET, ISN'T THAT  
16 CORRECT?

17 A. YES.

18 Q. ISN'T THAT CORRECT?

19 A. YES.

20 Q. YOU HAD NO OBJECTION TO IT?

21 A. NO, IT HAPPENED SUDDENLY.

22 Q. WELL, HOW MUCH TIME PASSED FROM THE TIME THAT  
23 JOHN HYDE TOOK OVER THE OPERATING OF THE BOAT AND THE  
24 ACCIDENT?

25 A. I WOULD SAY, IF HE TOOK OVER THE BOAT IN

1 FRONT - HE TOOK OVER THE BOAT IN FRONT OF SHACKLEFORD BANKS  
2 AND PROBABLY DROVE THE BOAT FOR LESS THAN FIVE MINUTES.

3 Q. DID YOU EVER - YOU HAD SAID SOMETHING IN THE  
4 COMPLAINT ABOUT WHILE HE WAS IN SHACKLEFORD HE WAS DOING A  
5 CERTAIN SPEED, DO YOU REMEMBER THAT?

6 A. NO, I DON'T REMEMBER THAT.

7 Q. WELL, DID YOU EVER SEE THE COMPLAINT, I'LL SHOW  
8 YOU A COPY HERE. TAKE A LOOK AT THAT AND SEE IF YOU'VE EVER  
9 SEEN IT BEFORE?

10 A. DO YOU HAVE A PAGE YOU WANT ME TO LOOK AT  
11 SPECIFICALLY, BECAUSE IT'LL TAKE ME A WHILE TO READ  
12 SOMETHING.

13 Q. WHY DON'T YOU LOOK AT THE WHOLE THING.

14 A. (PAUSE - PERUSES DOCUMENT.)

15 Q. HAVE YOU SEE IT BEFORE?

16 A. YES, SIR.

17 Q. DID YOU SUPPLY ANY OF THE INFORMATION THAT'S IN  
18 THERE?

19 A. YES, SIR.

20 Q. YOU WERE HERE YESTERDAY WHEN JOHN HYDE TESTIFIED  
21 ABOUT THE ROUTE THAT HE TOOK AND IT'S ON EXHIBIT NUMBER [9],  
22 I DON'T KNOW IF YOU CAN PAN OVER HERE, DO YOU REMEMBER HE  
23 TESTIFIED ABOUT THE ROUTE THAT HE TOOK AND HE MARKED IT OUT  
24 ON EXHIBIT [9]?

25 A. YES, SIR.

1 Q. AM I CORRECT THAT HE PICKED YOU UP AT OLDE  
2 TOWNE, ACTUALLY, HE CAME THIS GREEN ROUTE, IF YOU WILL, AND I  
3 WON'T DESCRIBE THE ROUTE, BUT YOU CAN SEE IT, PICKED YOU UP  
4 AT OLDE TOWNE AT YOUR DOCK, AND THEN THE RED SIGNIFIES THE  
5 ROUTE THAT YOU-ALL TOOK, DO YOU AGREE THAT THAT'S THE ROUTE  
6 YOU TOOK?

7 A. I CAN'T SAY WHERE HE WAS. I JUST KNOW THAT I  
8 STARTED OUT DRIVING AT OLDE TOWNE DOCK. I DON'T WHERE ALL HE  
9 GOT THERE, BUT . . .

10 Q. I'M ONLY ASKING YOU ABOUT . . .

11 A. ASK ME AGAIN THEN, I'M SORRY.

12 Q. SO HE PICKED YOU UP AT OLDE TOWNE, AND IF YOU  
13 FOLLOW THIS RED ROUTE, YOU ENDED UP GOING THROUGH THE CHANNEL  
14 AND UP BEHIND SHACKLEFORD ISLAND, IS THAT CORRECT?

15 A. YES, SIR, THAT'S WHERE I WAS DRIVING, FROM THE  
16 OLDE TOWNE YACHT CLUB FUEL DOCK TO BEHIND SHACKLEFORD BANKS.

17 Q. SO THE DOTTED LINE SHOWS THE PATH . . .

18 A. THAT I TOOK.

19 Q. . . . THAT YOU WERE DRIVING, OPERATING THE BOAT?

20 A. YES, SIR.

21 Q. THEN THERE'S A CIRCLE AND A SOLID LINE THAT'S  
22 HEADING OUT TOWARD THE INLET, AND THAT'S THE PATH THAT JOHN  
23 HYDE TOOK AS HE WAS OPERATING THE BOAT, IS THAT CORRECT?

24 A. NO, SIR.

25 Q. TELL ME WHY IT'S NOT CORRECT?

1           A.    HIS PATH WAS NORTH, AND WENT ACROSS NORTH OF  
2   THAT SOLID RED LINE, AND HIS PATH WAS ACROSS THE SHIP'S  
3   CHANNEL, RATHER THAN ENDING IN THE MID CHANNEL.

4           Q.    I'M GOING TO ASK YOU, WITH THE YELLOW MARKER, IF  
5   YOU COULD . . .

6           MR. WEEKS:  I'M GOING TO ASK THAT YOU NOT WRITE  
7   ON THAT EXHIBIT, THAT WAS MY EXHIBIT.  YOU CAN DEMONSTRATE,  
8   BUT DO NOT WRITE ON THAT EXHIBIT.

9           MR. JOHNSTON:  DON'T WE HAVE A MINIATURE?

10          MR. PION:  HE CAN ZOOM IN TIGHT, IF YOU WANT,  
11   AND IF DOCTOR HINES DOESN'T MIND SHOWING US ON THE VIDEO THE  
12   PATH THAT HE BELIEVES . . .

13          A.    CAN YOU GIVE ME THIS ONE FOR A MINUTE AND LET ME  
14   LOOK AT THIS ONE SO I WON'T HAVE TO STAND THERE, BECAUSE I'M  
15   NOT FEELING GOOD, AND I CAN KIND OF STUDY THIS ONE FOR A  
16   SECOND BEFORE I STAND UP, BECAUSE IT'S HARD TO CONCENTRATE.

17          Q.    SURE.

18          A.    (PAUSE - PERUSES CHART) - DO YOU WANT ME TO KIND  
19   OF POINT WITH A POINTER OR SOMETHING?

20          Q.    IF YOU COULD DO IT HERE, IF YOU COULD STAND UP,  
21   AND WE CAN HAVE THE CAMERA . . .

22          A.    CAN I TAKE THIS MIKE OFF?

23          Q.    CAN YOU CARRY IT?

24          A.    OKAY.

25          Q.    WHAT WE'RE TALKING ABOUT, BEFORE YOU DO THIS,

1 WE'RE TALKING ABOUT THE ROUTE THAT JOHN HYDE TOOK, AND,  
2 AGAIN, HE HAS NOTED IN RED, A SOLID LINE - A CIRCLE AND A  
3 SOLID LINE, THE PATH THAT HE SAID HE TOOK, AND YOU SAY HE  
4 TOOK A DIFFERENT ROUTE, I THINK?

5 A. RIGHT.

6 Q. OKAY. SO MAYBE YOU COULD POINT TO WHERE HE TOOK  
7 OVER THE OPERATION OF THE BOAT?

8 A. (INDICATING ON EXHIBIT.)

9 Q. DID HE TAKE OVER WHERE THE CIRCLE IS, ROUGHLY?

10 A. I WOULD SAY WE WERE DOWN CLOSER TO THE NUN, AND  
11 I DON'T KNOW - THERE'S A JETTY OVER HERE - (INDICATING) - AND  
12 I THINK HE TOOK OVER MORE HERE, BECAUSE I DROVE QUITE A BIT  
13 IN HERE - (INDICATING) - TRYING TO SEE IF THE BOAT WOULD  
14 HANDLE BETTER, AND THEN HE DROVE HERE ON PLANE, ACROSS HERE  
15 NORTH, AND CAME ACROSS HERE - (INDICATING) - AND THIS IS  
16 WHERE HE MADE HIS TURN HERE, AND THAT'S WHERE WE ENCOUNTERED  
17 THE WAVE, IN HERE - (INDICATING.)

18 Q. SO WAS THAT IN THE INLET?

19 A. I'M SORRY, I'M DRAWING WITH PENCIL, I'M SCREWING  
20 UP . . .

21 Q. THAT WAS IN THE INLET?

22 A. YES, THIS IS THE INLET VICINITY, RIGHT  
23 HERE - (INDICATING).

24 Q. SO WHEN YOU SAY HE WAS ON PLANE, HOW FAST WAS HE  
25 GOING, AND THAT WOULD HAVE BEEN BEHIND SHACKLEFORD ISLAND?

1           A.    HE GOT ON PLANE THERE, AND HE MADE THE TURN ON  
2 PLANE HERE - (INDICATING) - AND THAT WAS TWENTY, TWENTY-FIVE  
3 MILES AN HOUR AT LEAST.

4           Q.    HOW MANY TIMES DID YOU LOOK AT THE SPEEDOMETER,  
5 IF THAT'S WHAT WAS PRESENT ON THE BOAT?

6           A.    I HAD NOTICED IT WHEN I WAS DRIVING, BECAUSE I  
7 WAS TRYING TO SEE WHEN THE BOAT WOULD GET ON PLANE.

8           Q.    DID YOU GET IT UP TO TWENTY-FIVE TO THIRTY MILES  
9 AN HOUR?

10          A.    I GOT IT UP TO PLANE, AND IT TOOK OVER TWENTY TO  
11 GET THE BOAT ON PLANE, AND THAT'S IMPORTANT TO ME TO KNOW HOW  
12 FAST YOU HAVE TO GO TO GET ON PLANE.

13          Q.    THAT WAS IN THE CALM WATER AT SHACKLEFORD,  
14 CORRECT?

15          A.    NO, I DROVE NUMEROUS PLACES ON PLANE, OUT AT THE  
16 WAKE ZONE, COMING AWAY FROM OLDE TOWNE, OUT TO WHERE IT  
17 STARTED GETTING CHOPPY, OUT IN THE MIDDLE OF THE SOUND, TO  
18 THE SHIP'S CHANNEL, AND THEN I SLOWED DOWN AND CAME OFF  
19 PLANE, CROSSED ENOUGH TO WHERE I'M OUT OF THE TURMOIL, AND  
20 THEN RIGHT BEFORE YOU GET BACK TO SHACKLEFORD, I GOT BACK ON  
21 PLANE, AND THEN STAYED ON PLANE ALL BACK IN HERE TO SEE HOW  
22 FAST IT TAKES TO GET ON PLANE.

23          Q.    BACK IN HERE MEANING, BEHIND SHACKLEFORD ISLAND?

24          A.    COME FURTHER WEST, ALL IN THERE I'M ON PLANE  
25 COMING ALL THE WAY BACK.

1 Q. THAT WAS - THERE WEREN'T WAVES 3 TO 4 FEET  
2 THERE, WERE THERE?

3 A. I DON'T RECALL. I WOULD TELL YOU THAT IF YOU'VE  
4 GOT AN OPENING HERE - (INDICATING) - ALL OF THIS IS 3 TO 4,  
5 ALL OF THIS IN HERE. ANYTHING OPEN TO THE WIND AND THE  
6 CURRENT COMING THIS WAY IS ALL GOING TO BE 3 TO 4. YOU'RE  
7 NOT PROTECTED UNTIL YOU'RE BACK IN HERE - (INDICATING) - AND  
8 IF THE WIND WERE BLOWING THAT WAY THAT DAY, THAT WOULD BE  
9 CHOPPY TOO.

10 Q. WHAT'S YOUR CLAIM THAT JOHN HYDE DID WRONG?

11 A. JOHN DROVE TOO FAST FOR THE CONDITIONS OVER THE  
12 SHOAL, AND DROVE RIGHT PERPENDICULAR INTO THAT WAVE, AND  
13 DIDN'T TELL US WHAT WAS HAPPENING AS HE SAW IT HAPPENING.

14 Q. SO YOU WEREN'T EVEN LOOKING AHEAD THEN?

15 A. NO, SIR, I WAS WATCHING HIM. I FELT THE BOW  
16 COME UP, LOOKED UP, IT WAS TOO LATE THEN.

17 Q. WHAT ABOUT NEIL WAGONER, WAS HE LOOKING FORWARD?

18 A. I DON'T KNOW WHAT NEIL WAS DOING.

19 Q. DIDN'T NEIL, IN HIS STATEMENT, SAY THAT HE HAD  
20 BEEN OUT IN THOSE SAME CONDITIONS NUMEROUS TIMES AND FELT  
21 THERE WAS NO PROBLEM WITH OPERATING THE BOAT UNDER THOSE  
22 CONDITIONS THE WAY JOHN HYDE DID, ISN'T THAT WHAT HE SAID?

23 A. I DON'T REMEMBER WHAT HE SAID, BUT IF YOU'RE  
24 QUOTING HIM, I'M SURE THAT HE DID SAY THAT. BUT, AGAIN, I  
25 DON'T AGREE WITH THAT STATEMENT IF HE SAID THAT.

1 Q. SO YOU LAST LOOKED AT THE SPEEDOMETER AT WHAT  
2 POINT IN TIME?

3 A. I NOTICED THE SPEEDOMETER AS I DROVE THE BOAT,  
4 SIMPLY TO SEE HOW FAST I HAD TO DRIVE THE BOAT TO GET IT UP  
5 ON PLANE.

6 Q. DID YOU EVER SEE THE SPEEDOMETER WHILE JOHN HYDE  
7 WAS OPERATING THE BOAT?

8 A. I DON'T RECALL LOOKING AT IT, I JUST KNEW WHAT  
9 IT TOOK TO GET ME UP ON PLANE, AND I KNEW THAT WHEN WE WERE  
10 ON PLANE, WE HAD TO BE GOING OVER TWENTY, TWENTY-FIVE MILES  
11 AN HOUR, BECAUSE I COULD FEEL ACCELERATION RIGHT AS WE  
12 LAUNCHED INTO THAT WAVE. SO I KNOW WE WERE GOING OVER TWENTY  
13 MILES AN HOUR, AND I WOULD GUESS, IN MY ESTIMATE, WE WERE  
14 GOING TWENTY-FIVE MILES AN HOUR.

15 Q. BUT YOU REALLY DON'T KNOW THAT, DO YOU?

16 A. I CAN'T TELL YOU THE EXACT SPEED, NO, SIR.

17 Q. HE COULD HAVE BEEN DOING FIFTEEN MILES AN HOUR?

18 A. YOU COULDN'T GET ON PLANE AT FIFTEEN MILES AN  
19 HOUR, THAT, I DO KNOW.

20 Q. YOU MEAN IN THE SHOAL OR . . .

21 A. NO, PERIOD. YOU COULDN'T GET THAT BOAT ON PLANE  
22 AT FIFTEEN MILES AN HOUR.

23 Q. JOHN HYDE TESTIFIED THERE WERE THREE WAVES IN  
24 SUCCESSION THAT YOU HIT PERPENDICULAR RIGHT BEFORE THE  
25 ACCIDENT, IS THAT CORRECT?



1           A.    I ONLY CAN RECOUNT THAT ONE WAVE WE WENT OVER.  
2           Q.    SO YOU THINK IT WAS JUST ONE WAVE THEN?  
3           A.    NO, I CAN ONLY RECOUNT THAT ONE WAVE.  
4           Q.    COULD JOHN HYDE SEE THAT WAVE COMING?  
5           A.    WHEN I FELT THE BOW LIFT, I COULD SEE IT.  COULD  
6 HE SEE IT AT THAT MOMENT, ABSOLUTELY.  
7           Q.    HOW MUCH BEFORE HE . . .  
8           A.    I HAVE NO IDEA.  
9           Q.    MY QUESTION IS, HOW MUCH BEFORE HE HIT THAT WAVE  
10 PERPENDICULARLY DID HE SEE IT, OR COULD HE HAVE SEEN IT?  
11          A.    I CAN'T TELL YOU.  
12          Q.    I MEAN, LIKE, ONE SECOND, THREE SECONDS?  
13          A.    I DON'T KNOW BECAUSE I WASN'T LOOKING WHEN HE  
14 WAS LOOKING THE WHOLE TIME TO DRIVE THE BOAT, OBVIOUSLY, THE  
15 DRIVER'S LOOKING ALL THE TIME.  I'M NOT WATCHING HIM LOOK  
16 STRAIGHT AHEAD, I'M LOOKING AT HOW HE'S DRIVING THE BOAT.  
17 BUT WHEN I FELT THE BOAT LIFT UP, I SAW THE - IF YOU SAID,  
18 HINES, WHERE DO YOU THINK THE WAVE WAS, I'M SURE IT WAS  
19 LIFTING UP IN FRONT OF HIM FOR BOAT LENGTHS AHEAD OF THE  
20 BOAT.  
21          Q.    YOU WEREN'T SMASHING INTO WAVES BEFORE THAT,  
22 THAT WAS THE FIRST ONE THAT YOU REALLY SMASHED INTO?  
23          A.    I RECOUNT THAT ONE WAVE.  
24          Q.    JUST ONE?  
25          A.    JUST THAT ONE WAVE IS THE ONE I RECOUNT LIFTING

1 UP OVER.

2 Q. SO YOU WEREN'T ON PLANE WHEN YOU HIT THAT ONE  
3 WAVE?

4 A. I'M SORRY?

5 Q. YOU WERE NOT ON PLANE . . .

6 A. NO, WE WERE ON PLANE.

7 Q. SO YOU'RE SAYING THAT THE BOAT WAS SITTING RIGHT  
8 ON TOP OF THAT WAVE, THE CREST OF THAT WAVE?

9 A. OH, YES, WE WENT OVER THAT WAVE, DEFINITELY OVER  
10 THAT WAVE.

11 Q. BUT THERE WAS NO INDICATION BEFORE THAT THAT YOU  
12 WERE GOING TO HIT A WAVE LIKE THAT ON PLANE?

13 MR. HARDEE: OBJECTION. YOU CAN ANSWER, BEN.

14 A. ASK ME AGAIN?

15 Q. THERE WAS NO NOTICE BEFORE YOU HIT THAT WAVE  
16 THAT YOU HAD PLANED OVER THAT WAVE?

17 MR. HARDEE: NOTICE TO WHOM?

18 Q. NOTICE TO WHOEVER'S ON THE BOAT?

19 MR. HARDEE: OBJECTION TO THE QUESTION, BUT YOU  
20 MAY ANSWER, BEN.

21 A. I STILL DON'T UNDERSTAND THE QUESTION, I'M  
22 SORRY.

23 Q. THAT'S FINE.

24 A. DO IT ONE MORE TIME, I'LL TRY TO PAY ATTENTION.

25 Q. THERE WAS NO WAY FOR JOHN HYDE TO KNOW THAT HE

1 WAS GOING TO GO ON PLANE ON THAT WAVE, WAS THERE?

2 MR. HARDEE: OBJECTION. GO AHEAD.

3 A. WE WERE ON PLANE WHEN WE WENT OVER THE WAVE, AND  
4 THAT'S NOT ANSWERING YOUR QUESTION, I DON'T UNDERSTAND THE  
5 QUESTION, I'M GETTING CONFUSED. YOU CAN ASK ME AGAIN,  
6 BECAUSE I'M NOT ANSWERING, FOR SOME REASON I DON'T UNDERSTAND  
7 IT.

8 Q. IF I UNDERSTAND YOU CORRECTLY, WHAT YOU'RE  
9 SAYING THAT JOHN HYDE DID WRONG, AND YOU CORRECT ME IF I'M  
10 WRONG, IS THAT HE WAS GOING TOO FAST AT THE TIME THIS  
11 INCIDENT OCCURRED?

12 A. YES, SIR.

13 Q. IS THAT IT?

14 A. YES, SIR.

15 Q. ANYTHING ELSE?

16 A. AND THE FACT THAT WE WERE GOING TOO FAST IN THAT  
17 SHOAL AREA, AND IN COMBINATION, THAT WE'RE HITTING A WAVE  
18 HEAD ON, ON PLANE.

19 Q. SO HOW ARE YOU SUPPOSED TO HIT A WAVE IF NOT  
20 HEAD ON?

21 A. AT AN ANGLE.

22 Q. SO HITTING A WAVE PERPENDICULAR IS NOT THE WAY  
23 TO DO IT?

24 A. NO, SIR.

25 Q. IS THAT WHAT YOU'RE SAYING?

1 A. YES, SIR.  
2 Q. SO HOW DO YOU HIT A WAVE THEN?  
3 A. AT AN ANGLE.  
4 Q. ALWAYS?  
5 A. YES. NOT ALWAYS, NOT A 1 FOOT WAVE.  
6 Q. HOW HIGH OF A WAVE?  
7 A. A WAVE THAT WOULD CAUSE DISCOMFORT TO MY WIFE,  
8 HIT IT AT AN ANGLE.  
9 Q. HAD YOU EVER DONE THAT IN THE PAST, OVER THE  
10 YEARS?  
11 A. ALWAYS HIT THEM AT AN ANGLE WITH HER, YES.  
12 Q. WHAT ABOUT IF SHE'S NOT IN THE BOAT, YOU  
13 DON'T . . .  
14 A. I USUALLY GO AT AN ANGLE. I BOAT AS IF SHE'S IN  
15 THE BOAT, BECAUSE I'M ON COUMADIN, I HAVE TO BOAT CAREFULLY.  
16 Q. WHAT DO YOU MEAN, YOU BOAT CAREFULLY BECAUSE  
17 YOU'RE ON COUMADIN?  
18 A. I'M ON COUMADIN.  
19 Q. WHAT DOES THAT MEAN?  
20 A. I BOAT JUST LIKE I'D BOAT WITH HER IN THE BOAT,  
21 ALL THE TIME.  
22 Q. I DON'T UNDERSTAND WHAT YOU MEAN, THAT YOU  
23 BOAT . . .  
24 A. I'M ON COUMADIN, I'M ON A BLOOD THINNER, I'M NOT  
25 GOING TO JUMP WAVES AND BE AIRBORNE VOLUNTARILY.

1 Q. WHAT KIND OF SHOES WERE YOU WEARING THAT DAY?  
2 A. I BELIEVE THEY WERE THE BRAND THAT BEGINS WITH A  
3 "T," LIKE HIKING BOOTS.  
4 Q. WERE THEY DOCKSIDERS, OR . . .  
5 A. THEY WERE MORE THAN THAT. IN THE BACK OF MY  
6 MIND THERE'S A BOOT THAT BEGINS WITH A "T."  
7 Q. TIMBERLAND?  
8 A. YES, LIKE TIMBERLAND.  
9 Q. HOW WAS NEIL WAGONER HOLDING ON RIGHT BEFORE THE  
10 ACCIDENT?  
11 A. NEIL HAD MOVED TO BEHIND THE HELM.  
12 Q. COULD YOU HAVE HELD ON INSTEAD OF - I UNDERSTAND  
13 YOU HAD BOTH HANDS ABOVE YOUR HEAD?  
14 A. THIS ARM WAS LIKE THIS, AND THIS ARM WAS LIKE  
15 THIS - (INDICATING.)  
16 Q. SO YOUR LEFT ARM WAS LIKE STRAIGHT OUT, PARALLEL  
17 WITH . . .  
18 A. I DON'T KNOW THAT IT WAS PARALLEL, BUT IT WAS  
19 OUT MORE HORIZONTAL THAN VERTICAL, AND THE RIGHT ARM WAS MORE  
20 VERTICAL, WAS VERTICAL, BASICALLY.  
21 Q. SO YOU'RE SAYING THE LEFT ARM WAS OUT IN FRONT  
22 OF YOU?  
23 A. YES, YES.  
24 Q. AND THE RIGHT ARM WAS STRAIGHT UP, LIKE IF YOU  
25 WERE RAISING YOUR HAND IN CLASS?

1           A.    YES, SIR.

2           Q.    WHAT HAPPENED WHEN YOU HIT THE WAVE?

3           A.    WHEN WE WENT OFF THE WAVE, THE BOAT, ON MY SIDE,  
4    THAT I COULD SEE, WAS COMING OUT OF THE WATER.  THE BOW WAS  
5    ALREADY OVER THE WAVE AND OVER THE WATER, AND I REMEMBER,  
6    ABOUT THE LAST THING I REMEMBER, WAS STRIKING THE T-TOP WITH  
7    MY HEAD, NOW, WHERE, I DON'T KNOW AT ALL.  I REMEMBER HOLDING  
8    ON AND THEN HEARING, WHICH IS PROBABLY MAYBE NOT A REAL SOUND  
9    BUT A FEELING, A CRACK, AS I IMPACTED THE DECK, AND THEN  
10   FALLING TO THE DECK.

11          Q.    DID YOU EVER TELL JOHN HYDE THAT YOU THOUGHT HE  
12   WAS GOING TOO FAST?

13          A.    NO, SIR.  NO, I DID NOT.

14          Q.    WHY NOT?

15          A.    IT WAS HAPPENING TOO FAST, IT HAPPENED BEFORE I  
16   KNEW EVEN WHAT WAS HAPPENING.  WHEN I LOOKED UP, THE WAVE WAS  
17   ON US, HE MADE THE TURN, ACCELERATED, AND IT JUST HAPPENED SO  
18   FAST.

19          Q.    HOW LONG WAS HE TRAVELING AT THE SPEED THAT YOU  
20   SAID HE WAS PLANING, EVEN . . .

21          A.    WE WERE ON PLANE COMING ACROSS THE SHIP'S  
22   CHANNEL, SO I WOULD SAY WE WERE GOING AT LEAST TWENTY MILES  
23   AN HOUR AT THAT POINT IN TIME.  MY ESTIMATION, TO BE ON  
24   PLANE, AT LEAST TWENTY.  HE TURNS, AND ACCELERATES, AND WE'RE  
25   GOING TWENTY-FIVE MILES AN HOUR WHEN WE HIT THE WAVE, AND

1 WHAT WAS YOUR QUESTION, I'M SORRY?

2 Q. WELL, YOU SAID THAT HE WAS GOING TWENTY OR  
3 TWENTY-FIVE AND HE WAS PLANING?

4 A. RIGHT.

5 Q. DID YOU EVER SAY, HEY, JOHN, SLOW DOWN?

6 A. NO, WHEN HE MADE THAT TURN AND ACCELERATED, IT  
7 HAPPENED SO FAST . . .

8 Q. WHAT ABOUT BEFORE YOU MADE THE TURN?

9 A. NO. WHEN HE WAS TRAVELING ON PLANE, IT TOOK  
10 TWENTY TO STAY ON PLANE ACROSS THE CHANNEL, AND I'D REALLY  
11 DONE THE SAME THING, I DIDN'T FEEL IN PERIL THEN. THE ONLY  
12 TIME I FELT IN PERIL WAS WHEN HE TURNED, ACCELERATED IN THAT  
13 SHOAL AREA, SUDDENLY I FELT THE BOW LIFT UP. I DON'T MIND  
14 GETTING ON PLANE, THAT WASN'T THE PROBLEM.

15 Q. YOU MEAN IN THE SHOAL AREA?

16 A. NO. I DON'T MIND GETTING ON PLANE AS HE CROSSED  
17 THE SHIP'S CHANNEL, I HAD DONE THE SAME THING.

18 Q. SO TWENTY WAS OKAY THERE?

19 A. TWENTY WAS OKAY TO PUT THE BOAT ON PLANE,  
20 BECAUSE THAT'S WHAT CAUSED THE BOAT TO PORPOISE, AND I WANTED  
21 TO SEE WHAT WOULD MAYBE - WHAT WOULD STOP THE BOAT FROM  
22 PORPOISING, YOU HAVE TO GET THE BOAT ON PLANE TO STOP THE  
23 BOAT FROM PORPOISING. SO THE TWENTY WAS FINE, IT WAS THE  
24 TWENTY-FIVE OVER A WAVE IN THE SHOAL, PERPENDICULAR INTO THE  
25 WAVE, THAT WAS THE PROBLEM, IN MY ESTIMATION, MY OPINION,

1 THAT LED TO THE DAMAGE.

2 Q. SO WHAT SPACE OF TIME WAS THERE BETWEEN THE TIME  
3 HE WAS AT TWENTY AND THE TIME YOU SAY YOU THINK HE WAS AT  
4 TWENTY-FIVE?

5 A. GOSH, IT SEEMED LIKE AN HOUR WHEN I SAW THE WAVE  
6 AND WE LAUNCHED, BUT IT WAS PROBABLY, FROM THE TIME HE TURNED  
7 AND ACCELERATED, IT WAS TWO SECONDS, BUT IT'S HARD FOR ME TO  
8 KNOW.

9 Q. DID YOU EVER TALK TO JOHN HYDE AFTER THE  
10 ACCIDENT?

11 A. NO, SIR.

12 Q. OR ANYBODY AT BOATS UNLIMITED?

13 A. NO, SIR. CAN WE TAKE A QUICK BREAK.

14 MR. JOHNSTON: YES.

15 (A BRIEF RECESS WAS TAKEN.)

16 Q. HOW LONG WOULD YOU SAY THAT JOHN HYDE AND YOU  
17 WERE TOGETHER ON THE DAY OF THE ACCIDENT, FROM THE TIME HE  
18 PICKED YOU UP UNTIL THE ACCIDENT?

19 A. AN HOUR AND A HALF, MAX. YOU SAID UNTIL THE  
20 ACCIDENT, I'M SORRY, YOU DON'T MEAN UNTIL THE AMBULANCE?

21 Q. CORRECT. WELL, EVEN THEN, LET'S EVEN INCLUDE  
22 THAT?

23 A. I WOULD SAY, IF HE GOT THERE - FOR SOME REASON I  
24 THINK HE WAS LATE, SO IF HE GOT THERE AT 2:30, AN HOUR AND  
25 FIFTEEN MINUTES.